

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN W. KAR CZ,

Plaintiff,

v.

20-CV-9-LJV-HKS
DECISION & ORDER

THE CITY OF NORTH TONAWANDA,
NEW YORK; *et al.*,

Defendants.

On January 3, 2020, the *pro se* plaintiff, John W. Karcz, commenced this action under 42 U.S.C. § 1983 and New York State law. Docket Item 1. On January 28, 2020, the defendants moved to dismiss some of Karcz's claims. Docket Item 3. On February 26, 2020, Karcz responded to the motion to dismiss and cross-moved to amend the complaint, Docket Item 9, and on March 4, 2020, the defendants replied in further support of the motion to dismiss and opposed the cross-motion to amend, Docket Item 11. On March 10, 2020, this case was referred to United States Magistrate Judge H. Kenneth Schroeder, Jr., for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 12.

On February 24, 2023, Judge Schroeder issued a Report and Recommendation ("R&R") finding that the plaintiff's motion to amend should be granted and that the defendants' motion to dismiss should be granted in part.¹ Docket Item 15. More

¹ Judge Schroeder evaluated the motion to dismiss in light of the proposed amended complaint, recommending that certain amended claims be dismissed and that others survive. See Docket Item 15 at 2-4; see *generally Pettaway v. Nat'l Recovery Sol's., LLC*, 955 F.3d 299, 303-04 (2d Cir. 2020) (per curiam) ("[W]hen a plaintiff

specifically, Judge Schroeder recommended dismissing Karcz's claims against the City of North Tonawanda Police Department, as well as his claims for intentional infliction of emotional distress; negligent infliction of emotional distress; and negligent hiring, supervision, retention, and training. *See id.* The parties did not object to the R&R, and the time to do so now has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Schroeder's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Schroeder's recommendation to grant the plaintiff's motion to amend and grant the defendants' motion to dismiss in part.

For the reasons stated above and in the R&R, the plaintiff's motion to amend, Docket Item 9, is GRANTED, and the defendants' motion to dismiss, Docket Item 3, is GRANTED in part as follows: all claims against the City of North Tonawanda Police

properly amends [his] complaint after a defendant has filed a motion to dismiss that is still pending, the district court has the option of either denying the pending motion as moot or evaluating the motion in light of the facts alleged in the amended complaint."'). Because this Court accepts and adopts Judge Schroeder's recommendations, the amended complaint now is the operative pleading in this case.

Department are dismissed; the seventh cause of action asserting intentional infliction of emotional distress is dismissed; the eighth cause of action asserting negligent infliction of emotional distress is dismissed; and the tenth cause of action asserting negligent hiring, supervision, retention, and training is dismissed. The defendants' motion is otherwise DENIED. The Clerk of the Court shall terminate the City of North Tonawanda Police Department as a defendant to this case. The case is referred back to Judge Schroeder for further proceedings consistent with the referral order of March 10, 2020, Docket Item 12.

SO ORDERED.

Dated: March 27, 2023
Buffalo, New York

/s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE